THIRD DIVISION

[G.R. No. 116896. May 5, 1997]

PHILIPPINE NATIONAL CONSTRUCTION CORPORATION *petitioner, vs.* COURT OF APPEALS, MA. TERESA S. RAYMUNDO-ABARRA, JOSE S. RAYMUNDO, ANTONIO S. RAYMUNDO, RENE S. RAYMUNDO, and AMADOR S. RAYMUNDO, *respondents.*

D E C I S I O N

DAVIDE, JR., *J.*:

This petition for review on *certiorari* has its roots in Civil Case No. 53444, which was sparked by the petitioner's refusal to pay the rentals as stipulated in the contract of lease[1] on an undivided portion of 30,000 square meters of a parcel of land owned by the private respondents.

The lease contract, executed on 18 November 1985, reads in part as follows:

1. TERM OF LEASE - This lease shall be for a period of five (5) years, commencing on the date of issuance of the industrial clearance by the Ministry of Human Settlements, renewable for a like or other period at the option of the LESSEE under the same terms and conditions.

2. RATE OF RENT - LESSEE shall pay to the LESSOR rent at the monthly rate of TWENTY THOUSAND PESOS (₱20,000.00), Philippine Currency, in the manner set forth in Paragraph 3 below. This rate shall be increased yearly by Five Percent (5%) based on the agreed monthly rate of ₱20,000.00 as follows:

Monthly Rate Period Applicable

₱21,000.00 Starting on the 2nd year

₱22,000.00 Starting on the 3rd year

₱23,000.00 Starting on the 4th year

₱24,000.00 Starting on the 5th year

3. TERMS OF PAYMENT - The rent stipulated in Paragraph 2 above shall be paid yearly in advance by the LESSEE. The first annual rent in the amount of TWO HUNDRED FORTY THOUSAND PESOS (₱240,000.00), Philippine currency, shall be due and payable upon the execution of this Agreement and the succeeding annual rents shall be payable every twelve (12) months thereafter during the effectivity of this Agreement.

4. USE OF LEASED PROPERTY - It is understood that the Property shall be used by the LESSEE as the site, grounds and premises of a rock crushing plant and field office, sleeping quarters and canteen/mess hall. The LESSORS hereby grant to the LESSEE the right to erect on the Leased Property such structure(s) and/or improvement(s) necessary for or incidental to the LESSEE's purposes.

. . .

11. TERMINATION OF LEASE - This Agreement may be terminated by mutual agreement of the parties. Upon the termination or expiration of the period of lease without the same being renewed, the LESSEE shall vacate the Leased Property at its expense.

On 7 January 1986, petitioner obtained from the Ministry of Human Settlements a Temporary Use Permit[2] for the proposed rock crushing project. The permit was to be valid for two years unless sooner revoked by the Ministry.

On 16 January 1986, private respondents wrote petitioner requesting payment of the first annual rental in the amount of ₱240,000 which was due and payable upon the execution of the contract. They also assured the latter that they had already stopped considering the proposals of other aggregates plants to lease the property because of the existing contract with petitioner.[3]

In its reply-letter, petitioner argued that under paragraph 1 of the lease contract, payment of rental would commence on the date of the issuance of an industrial clearance by the Ministry of Human Settlements, and not from the date of signing of the contract. It then expressed its intention to terminate the contract, as it had decided to cancel or discontinue with the rock crushing project "due to financial, as well as technical, difficulties."[4]

The private respondents refused to accede to petitioner's request for the pretermination of the lease contract. They insisted on the performance of petitioner's obligation and reiterated their demand for the payment of the first annual rental.[5]

Petitioner objected to the claim of the private respondents and argued that it was "only obligated to pay ... the amount of ₱20,000.00 as rental payments for the one-month period of lease, counted from 07 January 1986 when the Industrial Permit was issued by the Ministry of Human Settlements up to 07 February 1986 when the Notice of Termination was served"[6] on private respondents.

On 19 May 1986, the private respondents instituted with the Regional Trial Court of Pasig an action against petitioner for Specific Performance with Damages.[7] The case was docketed as Civil Case No. 53444 at Branch 160 of the said court. After the filing by petitioner of its Answer with Counterclaim, the case was set for trial on the merits.

What transpired next was summarized by the trial court in this wise:

Plaintiffs rested their case on September 7, 1987 (p. 87 rec.). Defendant asked for postponement of the reception of its evidence scheduled on August 10, 1988 and as prayed for, was reset to August 25, 1988 (p. 91 rec.) Counsel for defendant again asked for postponement, through representative, as he was presently indisposed. The case was reset, intransferable to September 15 and 26, 1988 (p. 94 rec.) On September 2, 1988, the office of the Government Corporate Counsel entered its appearance for defendant (p. 95, rec.) and the original counsel later withdrew his appearance. On September 15, 1988 the Government Corporate Counsel asked for postponement, represented by Atty. Elpidio de Vega, and with his conformity in open court, the hearing was reset, intransferable to September 26 and October 17, 1988. (p. 98, rec.) On September 26, 1988 during the hearing, defendant's counsel filed a motion for postponement (urgent) as he had "sore eyes", a medical certificate attached.

Counsel for plaintiffs objected to the postponement and the court considered the evidence of the government terminated or waived. The case was deemed submitted for decision upon the filing of the memorandum. Plaintiffs filed their memorandum on October 26, 1988. (p. 111, rec.).

On October 18, 1988 in the meantime, the defendant filed a motion for reconsideration of the order of the court on September 26, 1988 (p. 107, rec.) The motion was not asked to be set for hearing (p. 110 rec.) There was also no proof of notice and service to counsel for plaintiff. The court in the interest of justice set the hearing on the motion on November 29, 1988. (p. 120, rec.) but despite notice, again defendant's counsel was absent (p. 120-A, dorsal side, rec.) without reason. The court reset the motion to December 16, 1988, in the interest of justice. The motion for reconsideration was denied by the court. A second motion for reconsideration was filed and counsel

set for hearing the motion on January 19, 1989. During the hearing, counsel for the government was absent. The motion was deemed abandoned but the court at any rate, after a review of the incidents and the grounds relied upon in the earlier motion of defendant, found no reason to disturb its previous order.[8]

On 12 April 1989, the trial court rendered a decision ordering petitioner to pay the private respondents the amount of ₱492,000 which represented the rentals for two years, with legal interest from 7 January 1986 until the amount was fully paid, plus attorney's fees in the amount of ₱20,000 and costs.[9]

Petitioner then appealed to the Court of Appeals alleging that the trial court erred in ordering it to pay the private respondent the amount of ₱492,000 and in denying it the right to be heard.

Upon the affirmance of the trial court's decision[10] and the denial of its motion for reconsideration, petitioner came to this Court ascribing to the respondent Court of Appeals the same alleged errors and reiterating their arguments.

First. Petitioner invites the attention of this Court to paragraph 1 of the lease contract, which reads: "This lease shall be for a period of five (5) years, commencing on the date of issuance of the industrial clearance by the Ministry of Human Settlements...." It then submits that the issuance of an industrial clearance is a suspensive condition without which the rights under the contract would not be acquired. The Temporary Use Permit is not the industrial clearance referred to in the contract; for the said permit requires that a clearance from the National Production Control Commission be first secured, and besides, there is a finding in the permit that the proposed project does not conform to the Zoning Ordinance of Rodriguez, (formerly Montalban), Rizal, where the leased property is located. Without the industrial clearance the lease contract could not become effective and petitioner could not be compelled to perform its obligation under the contract.

Petitioner is now estopped from claiming that the Temporary Use Permit was not the industrial clearance contemplated in the contract. In its letter dated 24 April 1986, petitioner states:

> We wish to reiterate PNCC Management's previous stand that it is only obligated to pay your clients the amount of ₱20,000.00 as rental payments for the one-month period of the lease, counted from 07 January 1986 when the Industrial Permit was issued by the Ministry of Human Settlements up to 07 February 1986 when the Notice of Termination was served on your clients.[11] (Underscoring Supplied).

The "Industrial Permit" mentioned in the said letter could only refer to the Temporary Use Permit issued by the Ministry of Human Settlements on 7 January 1986. And it can be gleaned from this letter that petitioner has considered the permit as industrial clearance; otherwise, petitioner could have simply told the private respondents that its obligation to pay rentals has not yet arisen because the Temporary Use Permit is not the industrial clearance contemplated by them. Instead, petitioner recognized its obligation to pay rental counted from the date the permit was issued.

Also worth noting is the earlier letter of petitioner; thus:

> [P]lease be advised of PNCC Management's decision to cancel or discontinue with the rock crushing project due to financial as well as technical difficulties. In view thereof, we would like to terminate our Lease Contract dated 18 November, 1985. Should you agree to the mutual termination of our Lease Contract, kindly indicate your conformity hereto by affixing your signature on the space provided below. May we likewise request Messrs. Rene, Jose and Antonio, all surnamed Raymundo and Mrs. Socorro A. Raymundo as Attorney-in-Fact of Amador S. Raymundo to sign on the spaces indicated below.[12]

It can be deduced from this letter that the suspensive condition - issuance of industrial clearance - has already been fulfilled and that the lease contract has become operative. Otherwise, petitioner did not have to solicit the conformity of the private respondents to the termination of the contract for the simple reason that no juridical relation was created because of the non-fulfillment of the condition.

Moreover, the reason of petitioner in discontinuing with its project and in consequently cancelling the lease contract was financial as well as technical difficulties, not the alleged insufficiency of the

Temporary Use Permit.

Second. Invoking Article 1266 and the principle of *rebus sic stantibus*, petitioner asserts that it should be released from the obligatory force of the contract of lease because the purpose of the contract did not materialize due to unforeseen events and causes beyond its control, *i.e.*, due to abrupt change in political climate after the EDSA Revolution and financial difficulties.

It is a fundamental rule that contracts, once perfected, bind both contracting parties, and obligations arising therefrom have the force of law between the parties and should be complied with in good faith.[13] But the law recognizes exceptions to the principle of the obligatory force of contracts. One exception is laid down in Article 1266 of the Civil Code, which reads: "The debtor in obligations to do shall also be released when the prestation becomes legally or physically impossible without the fault of the obligor."

Petitioner cannot, however, successfully take refuge in the said article, since it is applicable only to obligations "to do", and not to obligations "to give".[14] An obligation "to do" includes all kinds of work or service; while an obligation "to give" is a prestation which consists in the delivery of a movable or an immovable thing in order to create a real right, or for the use of the recipient, or for its simple possession, or in order to return it to its owner.[15]

The obligation to pay rentals[16] or deliver the thing in a contract of lease[17] falls within the prestation to give; hence, it is not covered within the scope of Article 1266. At any rate, the unforeseen event and causes mentioned by petitioner are not the legal or physical impossibilities contemplated in said article. Besides, petitioner failed to state specifically the circumstances brought about by the abrupt change in the political climate in the country except the alleged prevailing uncertainties in government policies on infrastructure projects.

The principle of *rebus sic stantibus*[18] neither fits in with the facts of the case. Under this theory, the parties stipulate in the light of certain prevailing conditions, and once these conditions cease to exist the contract also ceases to exist.[19] This theory is said to be the basis of Article 1267 of the Civil Code, which provides:

> ART. 1267. When the service has become so difficult as to be manifestly beyond the contemplation of the parties, the obligor may also be released therefrom, in whole or in part.

This article, which enunciates the doctrine of unforeseen events, is not, however, an absolute application of the principle of *rebus sic stantibus*, which would endanger the security of contractual relations. The parties to the contract must be presumed to have assumed the risks of unfavorable developments. It is therefore only in absolutely exceptional changes of circumstances that equity demands assistance for the debtor.[20]

In this case, petitioner wants this Court to believe that the abrupt change in the political climate of the country after the EDSA Revolution and its poor financial condition rendered the performance of the lease contract impractical and inimical to the corporate survival of the petitioner.

This Court cannot subscribe to this argument. As pointed out by private respondents:[21]

> It is a matter of record that petitioner PNCC entered into a contract with private respondents on November 18, 1985. Prior thereto, it is of judicial notice that after the assassination of Senator Aquino on August 21, 1983, the country has experienced political upheavals, turmoils, almost daily mass demonstrations, unprecedented, inflation, peace and order deterioration, the Aquino trial and many other things that brought about the hatred of people even against crony corporations. On November 3, 1985, Pres. Marcos, being interviewed live on U.S. television announced that there would be a snap election scheduled for February 7, 1986.
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> On November 18, 1985, notwithstanding the above, petitioner PNCC entered into the contract of lease with private respondents with open eyes of the deteriorating conditions of the country.

Anent petitioners alleged poor financial condition, the same will neither release petitioner from the binding effect of the contract of lease. As held in Central Bank v. Court of Appeals,[22] cited by the private respondents, mere pecuniary inability to fulfill an engagement does not discharge a contractual obligation, nor does it constitute a defense to an action for specific performance.

With regard to the non-materialization of petitioners particular purpose in entering into the contract of lease, *i.e.*, to use the leased premises as a site of a rock crushing plant, the same will not invalidate the contract. The cause or essential purpose in a contract of lease is the use or enjoyment of a thing.[23] As a general principle, the motive or particular purpose of a party in entering into a contract does not affect the validity or existence of the contract; an exception is when the realization of such motive or particular purpose has been made a condition upon which the contract is made to depend.[24] The exception is not apply here.

Third. According to petitioner, the award of ₱492,000 representing the rent for two years is excessive, considering that it did not benefit from the property. Besides, the temporary permit, conformably with the express provision therein, was deemed automatically revoked for failure of petitioner to use the same within one year from the issuance thereof. Hence, the rent payable should only be for one year.

Petitioner cannot be heard to complain that the award is excessive. The temporary permit was valid for two years but was automatically revoked because of its non-use within one year from its issuance. The non-use of the permit and the non-entry into the property subject of the lease contract were both imputable to petitioner and cannot, therefore, be taken advantage of in order to evade or lessen petitioners monetary obligation. The damage or prejudice to private respondents is beyond dispute. They unquestionably suffered pecuniary losses because of their inability to use the leased premises. Thus, in accordance with Article 1659 of the Civil Code,[25] they are entitled to indemnification for damages; and the award of ₱492,000 is fair and just under the circumstances of the case.

Finally, petitioner submits that the trial court gravely abused its discretion in denying petitioner the right to be heard.

We disagree. The trial court was in fact liberal in granting several postponements[26] to petitioner before it deemed terminated and waived the presentation of evidence in petitioners behalf.

It must be recalled that private respondents rested their case on 7 September 1987 yet.[27] Almost a year after, or on 10 August 1988 when it was petitioners turn to present evidence, petitioners counsel asked for postponement of the hearing to 25 August 1988 due to conflict of schedules,[28] and this was granted.[29] At the rescheduled hearing, petitioners counsel, through a representative, moved anew for postponement, as he was allegedly indisposed.[30] The case was then reset intransferable to September 15 and 26, 1988.[31] On 2 September 1988, the Office of the Government Corporate Counsel, through Atty. Elpidio J. Vega, entered its appearance for the petitioner,[32] and later the original counsel withdrew his appearance.[33] On 15 September 1988, Atty. Vega requested for postponement to enable him to go over the records of the case.[34] With his conformity, the hearing was reset intransferable to September 26 and October 17, 1988.[35] In the morning of 26 September 1988, the court received Atty. Vegas Urgent Motion for Postponement on the ground that he was afflicted with conjunctivitis or sore eyes.[36] This time, private respondents objected; and upon their motion, the court deemed terminated and waived the presentation of evidence for the petitioner.[37] Nevertheless, before the court considered the case submitted for decision, it required the parties to submit their respective memoranda within thirty days.[38] But petitioner failed to file one.

Likewise, the court was liberal in respect to petitioners motion for reconsideration. Notwithstanding the lack of request for hearing and proof of notice and service to private respondents, the court set the hearing of the said motion on 29 November 1988.[39] Upon the denial of the said motion for lack of merit,[40] petitioner filed a second motion for reconsideration. But during the hearing

of the motion on a date selected by him, Atty. Vega was absent for no reason at all, despite due notice.[41]

From the foregoing narration of procedural antecedents, it cannot be said that the petitioner was deprived of its day in court. The essence of due process is simply an opportunity to be heard.[42] To be heard does not only mean oral arguments in court; one may be heard also through pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.[43]

WHEREFORE, the instant petition is DENIED and the challenged decision of the Court of Appeals is AFFIRMED *in toto*.

No pronouncements as to costs.

SO ORDERED.

Narvasa, C.J., (Chairman), Melo, Francisco, and *Panganiban, JJ.,* concur.

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[1] Exhibit "A," Original Record (OR), 68.

[2] Exhibit "C," OR, 77; *Rollo*, 57.

[3] Exhibit "B," OR, 76.

[4] Exhibit "D," OR, 78.

[5] Exhibit "E," *Id.*, 80.

[6] Exhibit "F," *Id.*, 81-82.

[7] *Id.*, 1-7.

[8] Order of 19 January 1989, OR, 129-130; Decision, 2-3.

[9] OR 134-137; *Rollo*, 53-56. Per Judge Mariano M. Umali.

[10] *Rollo*, 24-31. Per then Associate Justice Justo P. Torres, Jr. (now Associate Justice of the Supreme Court), with the concurrence of then Associate Justice Bernardo P. Pardo and Associate Justice Corona Ibay-Somera.

[11] Exhibit "F-1," OR, 82.

[12] Exhibit "D," *Id.*, 78-79.

[13] Articles 1159, 1308, 1315, and 1356 of the Civil Code.

[14] DESIDERIO P. JURADO, Comments and Jurisprudence on Obligations and Contracts 292 (10th revised ed. 1993) (hereafter JURADO).

[15] IV ARTURO M. TOLENTINO, Commentaries and Jurisprudence on the Civil Code of the Philippines 57 (1991) (hereafter IV TOLENTINO).

[16] JURADO, 283.

[17] IV TOLENTINO 57.

[18] At this point of affairs; in these circumstances. A name given to a tacit condition, said to attach to all treaties, that they shall cease to be obligatory so soon as the state of facts and conditions upon which they were founded has substantially changed. (Blacks Law Dictionary, 1139 [5th ed., 1979]).

[19] Naga Telephone Co. *v*. Court of Appeals, 230 SCRA 351, 365 [1994] citing IV TOLENTINO 347.

[20] IV TOLENTINO 347.

[21] Memorandum for the Private Respondents, 17; *Rollo*, 160.

[22] 139 SCRA 46 [1985], citing Repide *v*. Afzelius, 39 Phil. 190 [1918].

[23] V TOLENTINO 206 [1992]; V EDGARDO E. PARAS, Civil Code of the Philippines, 307 [1995].

[24] V TOLENTINO 535

[25] It provides:

Art. 1659. If the lessor or the lessee should not comply with the obligations set forth in Articles 1654 and 1657, the aggrieved party may ask for rescission of the contract and indemnification for damages, or only the latter, allowing the contract to remain in force.

[26] Ocampo *v*. Arboleda, 153 SCRA 374, 381 [1987].

[27] OR, 87.

[28] OR, 89.

[29] *Id.*, 91.

[30] *Id.*, 94.

[31] *Id.*

[32] *Id.*, 95.

[33] *Id.*, 99.

[34] *Id.*, 98.

[35] *Id.*

[36] *Id.*, 101.

[37] *Id.*, 106.

[38] *Id.*

[39] *Id.*, 120.

[40] *Id.*, 128.

[41] *Id.*, 127.

[42] Roces *v*. Aportadera, 243 SCRA 108, 114 [1995]; Vallende *v.* NLRC, 245 SCRA 662, 666-667 [1995]; Navarro III *v*. Damasco, 246 SCRA 260, 265 [1995].

[43] Mutuc *v.* Court of Appeals, 190 SCRA 43, 49 [1990].